

2013 IL App (1st) 122732WC-U  
No. 1-12-2732WC  
Order filed: November 25, 2013

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT  
WORKERS' COMPENSATION COMMISSION DIVISION

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JAMES EADS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 11-L-51412
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION, <i>et al.</i> ,	)	
	)	Honorable
(Martin Cement Co., Defendant-	)	Margaret Brennan,
Appellee).	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Presiding Justice Holdridge and Justice Hoffman, Harris, and Stewart concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Commission's finding that claimant failed to sustain his burden of proving a causal connection between his current condition of ill-being and his employment is not against the manifest weight of the evidence.
- ¶ 2 Claimant, James Eads, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2004)) alleging an injury to his left knee while working for respondent, Martin Cement Co. Following a hearing pursuant to section 19(b)

of the Act (820 ILCS 305/19(b) (West 2004)), an arbitrator determined that claimant sustained an accident that arose out of and in the course of claimant's employment, but that his current condition of ill-being was not causally connected to the accident. Nevertheless, the arbitrator awarded claimant 40 weeks of temporary total disability (TTD) benefits. The Illinois Workers' Compensation Commission (Commission) affirmed and adopted the decision of the arbitrator and remanded the matter to the arbitrator for further proceedings. The circuit court of Cook County confirmed the decision of the Commission, and claimant appealed to this court.

¶ 3 Noting "internal inconsistencies" in the Commission's disposition regarding accident, causation, and TTD, as well as its decision to remand the matter for further proceedings despite the lack of a causal connection, we reversed the judgment of the circuit court, vacated the decision of the Commission, and remanded the matter back to the Commission with directions to enter a new decision resolving these inconsistencies. *Eads v. Illinois Workers' Compensation Comm'n*, No. 1-08-2970WC (December 22, 2009) (unpublished order under Supreme Court Rule 23). On remand, the Commission denied benefits on the basis that claimant failed to establish a causal connection between his condition of ill-being and his employment. The circuit court of Cook County confirmed the decision of the Commission, and claimant has again appealed to this court. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The following factual recitation is taken from the evidence presented at the arbitration hearing held on January 17, 2006. In 1996, claimant injured his left knee while working for a previous employer. Claimant received treatment from Dr. Matthew Jimenez, who performed an arthroscopy of his left knee on December 26, 1996. Dr. Jimenez's operative report noted "significant

degenerative tears of the lateral meniscus,” but stated that the “medial meniscus appears normal.” The operative report also indicated a partial tear of the anterior cruciate ligament and chondromalacia, grade two, of the patellofemoral joint, the medial femoral condyle, the lateral femoral condyle, and the lateral tibial condyle. Claimant testified that, after this surgery, he did not seek further medical treatment or have any problems with his knee until an accident which occurred on February 7, 2005.

¶ 6 On that date, claimant was employed by respondent as an iron worker. His duties included placing wire mesh where a concrete floor was to be laid and then, after wet concrete was poured, lifting the mesh into position. Claimant testified that, on February 7, 2005, he was standing shin-deep in wet concrete using a hook to pull up the wire mesh. As he was pulling, a weld broke on the mesh and he fell backwards. To keep from hitting the ground, claimant fell against a column behind him. His feet, however, “stayed planted” in the concrete and claimant testified that he “couldn’t move [his legs] because they were [in] concrete.” According to claimant, he felt a “pop” in his left knee followed by pain. At that point, claimant stated that he did not know “whether [he] was even hurt or not,” so he “shook it off” and was able to work the rest of the day. When he returned to work the following day, claimant noticed that his knee was “acting up again.” He stopped working and informed his supervisor that he needed to see a doctor. Claimant then made an appointment to see Dr. Jimenez, the physician who had previously treated him in 1996.

¶ 7 Claimant presented to Dr. Jimenez on February 10, 2005, complaining of “clicking, popping, and swelling” in his left knee. The history section of Dr. Jimenez’s report noted that claimant had a “recent work-related injury on February 7, 2005, when he injured his knee while working again on

the job.” Following an examination, Dr. Jimenez observed an effusion and a positive Apley grind test. He ordered an MRI of the left knee and instructed claimant to remain off work. Claimant underwent the MRI on February 11, 2005. The MRI showed a small knee-joint effusion, chondromalacia patella, osteoarthritic changes, a “tear posterior horn medial meniscus,” and a small Baker’s cyst. After reviewing the MRI, Dr. Jimenez diagnosed claimant with a meniscal tear and recommended surgery.

¶ 8 On March 18, 2005, Dr. Jimenez performed a second arthroscopy on claimant’s left knee. According to Dr. Jimenez’s operative report, the arthroscopic examination showed grade 1, 2, and 3 chondromalacia in the patellofemoral joint and the medial femoral condyle; a left knee lateral meniscus tear, “degenerative, in the mid substance, which was unstable”; and a left knee synovial cyst and hypertrophic synovium at the lateral joint line. The operative note states that the medial meniscus was “free from significant damage.”

¶ 9 Claimant continued to treat with Dr. Jimenez postoperatively. On March 24, 2005, Dr. Jimenez recommended that claimant undergo physical therapy, which claimant participated in from March 29, 2005, until September 27, 2005. On April 23, 2005, claimant presented to Dr. Jimenez with an effusion in the left knee “unrelated to his last surgery on March 18, 2005.” Dr. Jimenez aspirated claimant’s knee and instructed claimant to return in four weeks. Claimant returned to Dr. Jimenez’s office on June 16, 2005, and August 18, 2005, for “routine followup[s].” During both visits, Dr. Jimenez noted an effusion of the left knee and a positive Apley grind test, administered a steroid injection, and instructed claimant to remain off work.

¶ 10 After claimant failed to appear for sessions on September 29, October 4, and October 6,

2005, he was discharged from physical therapy. On October 13, 2005, Dr. Jimenez took X rays of claimant's left knee which showed "minimal degenerative changes." On the same date, Dr. Jimenez released claimant to light-duty work with no lifting greater than 25 pounds, no prolonged standing or walking, and no ladder climbing or working at heights. Dr. Jimenez anticipated claimant would reach maximum medical improvement in four to six weeks. Claimant testified that he contacted respondent about returning to work in a light-duty capacity, but no jobs were available within his restrictions. On December 1, 2005, Dr. Jimenez prescribed work hardening in anticipation of claimant's release to full duty.

¶ 11 At the request of the attorneys representing respondent, claimant was scheduled to be examined by Dr. Michael Orth on November 15, 2005. See 820 ILCS 305/12 (West 2004). Claimant, however, did not attend the examination. At the arbitration hearing, claimant testified that he was sick and forgot about the appointment. When claimant missed the November 15, 2005, examination, respondent terminated the payment of TTD benefits. See 820 ILCS 305/12 (West 2004). In addition, the workers' compensation carrier refused to authorize the work-hardening program prescribed by Dr. Jimenez.

¶ 12 After rescheduling the appointment, claimant was examined by Dr. Orth on January 3, 2006. In his report of that visit, Dr. Orth outlined the history of claimant's left knee pain, his review of claimant's medical records, and his physical examination of claimant. Dr. Orth opined that claimant suffered from degenerative arthritis and that this condition was present in 1996. He noted, however, that without X rays, he was unable to determine the severity of claimant's degenerative condition.

¶ 13 In his report, Dr. Orth concluded that claimant's present complaints of pain, as well as his

need for medical treatment and lost work time, were due to his preexisting arthritis and not a work-related injury that occurred on February 7, 2005. He also opined that any pain claimant experienced on February 7, 2005, was a mere manifestation of claimant's preexisting condition. Dr. Orth based his opinions on the fact that claimant's medical records did not state the type of injury sustained by claimant, they merely stated that he sustained an injury on that day. He noted that, in the history related to him, claimant also did not mention any particular type of injury, only that he noticed pain in his left knee while pouring cement and pulling wire mesh. Dr. Orth also based his opinion on the fact that claimant's complaints of clicking, popping, and swelling to Dr. Jimenez were secondary to degenerative arthritis and that the findings in claimant's operative report were consistent with degenerative arthritis and did not show evidence of an acute injury. Finally, Dr. Orth believed that the type of activity claimant was performing on February 7, 2005, would not have produced a knee injury or aggravated a preexisting knee problem.

¶ 14 Claimant last saw Dr. Jimenez on January 12, 2006. Claimant told Dr. Jimenez that he had recently undergone an independent medical evaluation, was "concerned" about Dr. Orth's opinion, and wanted Dr. Jimenez to evaluate his left knee. Upon examination, Dr. Jimenez noted continued pain on range of motion, ambulation with a limp, an effusion, and a positive Apley grind test. Dr. Jimenez kept claimant at light duty and again recommended that claimant undergo a work-hardening program. As of the date of the arbitration hearing, Dr. Jimenez had not returned claimant to work in a full-duty capacity.

¶ 15 At the conclusion of the arbitration hearing, the arbitrator found that claimant sustained a work-related accident on February 7, 2005. However, the arbitrator described the occurrence as

“inconsequential to [claimant’s] present condition of ill-being,” and, relying on the “unrebutted” opinion of Dr. Orth, concluded that claimant’s “condition of ill-being with regard to his left knee condition is not causally related to a work injury.” Despite this finding, the arbitrator awarded claimant 40 weeks of TTD benefits from February 9, 2005, through November 15, 2005. See 820 ILCS 305/8(b) (West 2004). The arbitrator, however, refused to award TTD benefits after November 15, 2005 (the date of the initial section 12 examination), or order respondent to pay for certain medical expenses incurred by claimant.

¶ 16 Claimant filed a petition for review of the arbitrator’s decision before the Commission. In a unanimous decision, the Commission affirmed and adopted the decision of the arbitrator. The Commission also remanded the matter to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm’n*, 78 Ill. 2d 327 (1980). Thereafter, claimant sought judicial review of the Commission’s decision in the circuit court of Cook County. The circuit court confirmed the Commission’s decision, and claimant appealed to this court.

¶ 17 On appeal, we reversed the judgment of the circuit court, vacated the decision of the Commission, and remanded the cause with directions. We determined that the Commission delivered an internally inconsistent decision by awarding claimant 40 weeks of TTD benefits for an injury Dr. Orth opined was not caused by the February 7, 2005, accident and which the Commission itself described as “inconsequential.” *Eads v. Illinois Workers’ Compensation Comm’n*, No. 1-08-2970WC (December 22, 2009) (unpublished order under Supreme Court Rule 23). It was also unclear to us as to why the Commission decided to remand the matter for additional proceedings pursuant to *Thomas* given its finding of no causation between claimant’s current condition of ill-

being and his employment. *Eads v. Illinois Workers' Compensation Comm'n*, No. 1-08-2970WC (December 22, 2009) (unpublished order under Supreme Court Rule 23). We explained that if, in fact, the Commission found a lack of causation between claimant's current condition of ill-being and the February 7, 2005, accident, benefits were no longer warranted under the Act and there would be no reason for a remand. *Eads v. Illinois Workers' Compensation Comm'n*, No. 1-08-2970WC (December 22, 2009) (unpublished order under Supreme Court Rule 23). In light of these inconsistencies, we found it impossible to meaningfully review the Commission's decision. *Eads v. Illinois Workers' Compensation Comm'n*, No. 1-08-2970WC (December 22, 2009) (unpublished order under Supreme Court Rule 23). As such, we remanded the matter to the Commission to "make itself understood before we undertake to review the propriety of its decision." *Eads v. Illinois Workers' Compensation Comm'n*, No. 1-08-2970WC (December 22, 2009) (unpublished order under Supreme Court Rule 23).

¶ 18 Upon remand, the Commission unanimously modified the decision of the arbitrator. Initially, the Commission noted its agreement with the arbitrator's finding that claimant failed to carry his burden of demonstrating that his need for surgery was causally related to any workplace accident. In reaching this conclusion, the Commission took "special notice of both the history of the accident [claimant] provided at his arbitration hearing as well as the discrepancy between [claimant's] testimony concerning the claimed accident and the history of the accident he provided to both the treating and examining medical professionals." Notably, the Commission found that the description of the claimed accident given at the arbitration hearing was more detailed than the description claimant provided to the physicians even though the histories provided to the physicians were closer



in time to the alleged accident. The Commission also determined that the accident was unwitnessed, and it did not find credible claimant's testimony that he "remained working shin-deep in concrete that had hardened to such an extent that it kept [claimant's] feet and shins in place while he fell backwards." Given its finding, the Commission found any remaining issues moot and denied any compensation. Thereafter, claimant sought judicial review of the Commission's decision in the circuit court of Cook County. The circuit court again confirmed the Commission's decision, and claimant again appealed to this court.

¶ 19

## II. ANALYSIS

¶ 20 Claimant's sole contention on appeal is that the Commission's conclusion that his current condition of ill-being was not causally connected to his February 7, 2005, work-related accident is against the manifest weight of the evidence. An injured employee bears the burden of proof to establish the elements of his right to compensation, including the existence of a causal connection between his condition of ill-being and his employment. *Navistar International Transportation Corp. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1202 (2000). To be compensable under the Act, an injury need only be *a* cause of an employee's condition of ill-being, not the sole or primary causative factor. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Moreover, an employer takes an employee as it finds him. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007). Thus, recovery may be had where an occurrence at work aggravates a preexisting condition. *Sisbro, Inc.*, 207 Ill. 2d at 204-05. As our supreme court has explained, "in preexisting condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the

employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *Sisbro, Inc.*, 207 Ill. 2d at 204-05.

¶ 21 Causation presents a question of fact. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 293 (1992). In resolving questions of fact, it is within the province of the Commission to assess the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). Moreover, we owe substantial deference to the Commission in the evaluation of medical evidence due to its long-recognized expertise in this area. *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979); see also *Freeman United Coal Mining Co. v. Illinois Workers' Compensation Comm'n*, 386 Ill. App. 3d 779, 783 (2008) ("Interpretation of medical testimony is particularly within the province of the Commission."). We review the Commission's factual determinations under the manifest-weight-of-the-evidence standard. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Mlynarczyk v. Illinois Workers' Compensation Comm'n*, 2013 IL App (3d) 120411WC, ¶ 17. With these standards in mind, we review the Commission's decision that claimant failed to establish causation.

¶ 22 Upon remand, the Commission agreed with the arbitrator and concluded that claimant failed to carry his burden of establishing his condition of ill-being was causally related to his employment. The arbitrator determined that although claimant did sustain an accident arising out of and in the course of his employment on February 7, 2005, this occurrence was "inconsequential," and that

claimant's condition of ill-being was not causally connected to his employment. In support of this latter determination, the arbitrator relied on the opinion of Dr. Orth, respondent's section 12 examiner, who opined that claimant's surgery and associated medical treatment was not related to the February 7, 2005, incident. The arbitrator found that Dr. Orth's opinion was "unrebutted." The arbitrator acknowledged that claimant visited Dr. Jimenez on January 12, 2006, for an opinion, but he found that Dr. Jimenez's report did not adequately address the issue of causal connection.

¶ 23 A review of the record reveals ample support for the Commission's decision. Dr. Orth opined that claimant's condition of ill-being was not caused by any work-related injury, but was the result of the normal degenerative process of claimant's preexisting condition of ill-being, *i.e.*, degenerative arthritis. Dr. Orth based his opinion on the fact that: (1) claimant's medical records did not state the type of injury sustained by claimant, but merely that he sustained an injury on the date in question; (2) claimant did not mention any particular type of injury to Dr. Orth, only that he noticed pain in his left knee while pouring cement and pulling wire mesh; (3) claimant's complaints of clicking, popping, and swelling to Dr. Jimenez were secondary to degenerative arthritis and the findings in Dr. Jimenez's 2005 operative report were consistent with degenerative arthritis and not indicative of an acute injury; and (4) the type of activity claimant was performing on February 7, 2005, would not have produced a knee injury or aggravated a preexisting knee problem. The record also supports the Commission's finding that Dr. Orth's opinion is unrebutted. Although Dr. Jimenez's office notes repeatedly refer to claimant's report of a work-related accident on February 7, 2005, the details of the occurrence are never referenced and Dr. Jimenez never offers a causation opinion. Thus, Dr. Orth's medical opinion provides strong support for the Commission's conclusion

that claimant failed to carry his burden of establishing causation.

¶ 24 Claimant, nevertheless, complains that the Commission's decision on remand contains "unsupported findings and impermissible inferences." Initially, he asserts that the Commission's finding that the accident was "unwitnessed" has no support in the record. As noted above, in resolving questions of fact, it is within the province of the Commission to assess the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Hosteny*, 397 Ill. App. 3d at 674. Although a Commission decision which is based upon mere speculation cannot stand, circumstantial evidence will support an inference as long as it is reasonable and proper. *City of Chicago v. Industrial Comm'n*, 75 Ill. 2d 270, 280 (1979); *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 106 (2006). Aside from his own testimony, claimant did not call any witness to testify to the alleged occurrence. Therefore, the Commission's finding that the alleged accident was not witnessed is a reasonable inference from the evidence presented at the arbitration hearing. Claimant further asserts that there is no basis for the Commission's description of his testimony "as suggesting that the concrete had solidified to the point that it locked his legs in place." Claimant testified at the arbitration hearing that when he fell backwards, his feet "stayed planted" in the concrete and that he "couldn't move [his legs] because they were [in] concrete." The Commission commented that it was "not persuaded that [claimant] remained working shin-deep in concrete that had hardened to such an extent that it kept [claimant's] feet and shins in place while he fell backwards." Again, this was a reasonable inference from the evidence presented at the arbitration hearing.

¶ 25 Claimant also maintains that the "chain of events" clearly demonstrates that the condition

of ill-being of his left knee is causally connected to his employment. In *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59 (1982), the supreme court stated the following regarding the “chain of events” theory:

“This court has held that medical evidence is not an essential ingredient to support the conclusion of the Industrial Commission that an industrial accident caused the disability. A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability *may* be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee’s injury.” (Emphasis added.) *International Harvester*, 93 Ill. 2d at 63-64.

In the present case the Commission tacitly rejected the chain of events theory and we cannot say that the Commission’s decision was erroneous. In particular, we note that there was medical evidence to support the Commission’s finding that the condition of claimant’s left knee is not causally related to his employment. The only expert to directly offer an opinion on causation was Dr. Orth. Dr. Orth opined that claimant’s condition of ill-being was not caused by any acute trauma, but was the result of the normal degenerative process of claimant’s preexisting condition of ill-being, *i.e.*, degenerative arthritis. Further, as noted above, Dr. Orth offered various grounds for his opinion, and claimant presented no evidence to rebut Dr. Orth. The Commission adopted the opinion of Dr. Orth, a decision to which we owe substantial deference. See *Long*, 76 Ill. 2d at 566. Claimant complains that Dr. Orth’s report is “inaccurate” and his conclusions “are simply not reliable.” However, claimant does not explain why this is the case. Claimant also points out that Dr. Orth diagnosed a degenerative condition without examining any X rays. Despite Dr. Orth’s failure to review any

diagnostic films, the Commission adopted his opinion as was its province to do as the trier of fact. See *Hosteny*, 397 Ill. App. 3d at 674. In short, we cannot say that the alleged shortcomings identified by claimant in Dr. Orth's testimony render a conclusion opposite to the one reached by the Commission clearly apparent. Accordingly, in light of the foregoing evidence, we conclude that the Commission's decision that claimant failed to carry his burden of establishing a causal connection between his condition of ill-being and his employment is not against the manifest weight of the evidence. Given our finding that the Commission's finding on causation is not against the manifest weight of the evidence, claimant's request for TTD benefits and medical expenses is moot.

¶ 26

#### V. CONCLUSION

¶ 27 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County, which confirmed the decision of the Commission. By this order, we also deny respondent's motion to cite additional authority, which we took with the case.

¶ 28 Affirmed.